

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

REGINALD C. MALONE, SR.,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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**No. 3:09-1100
Judge Echols**

MEMORANDUM

The petitioner, a resident of Nashville, is a former state inmate currently on parole. The petitioner brings this action under 28 U.S.C. § 2254, seeking federal *habeas corpus* relief from his March 8, 2007 conviction on a drug related offense.¹

The petition shows that the petitioner's case is final on direct review. (Docket Entry No. 1, ¶ 9, p. 3). However, state post-conviction proceedings are ongoing. More particularly, the petitioner's request for post-conviction relief, having been denied, is pending on appeal. (Docket Entry No. 1, ¶¶ 11(c), 14, pp. 5-6). It is apparent from the petition that the two grounds for relief raised in this action, *i.e.*, his claim under *Brady v. Maryland*, 373 U.S. 83 (1963) and his claim of ineffective assistance of counsel, were both raised on post-conviction, and are both pending on appeal.² (Docket Entry No. 1, ¶ 11(b)(3), 12.A-B, pp. 4-5).

The law is well established that a petition for federal *habeas corpus* relief will not be considered unless the petitioner has first exhausted all available state court remedies for each claim presented in his petition. 28 U.S.C. § 2254(b)(1)(A); *see Carey v. Saffold*, 536 U.S. 214, 220


¹ A person on parole is in custody within the meaning of § 2254. *See Rosales-Garcia v. Holland*, 322 F.3d 386, 394-95 (6th Cir.2003)(*en banc*); *DePompei v. Ohio Adult Parole Auth.*, 999 F.2d 138, 140 (6th Cir. 1993).

² The petitioner's post-conviction petition was denied on August 12, 2009. (Docket Entry No. 1, ¶ 11(b)(6), p. 4). Therefore, the petitioner has only recently appealed the judgment of the post-conviction court.

(2002); *Martin v. Mitchell*, 280 F.3d 594, 603 (6th Cir. 2002). This means that, as a condition precedent to seeking federal relief, the petitioner's claims must have been fairly presented to the state courts. See *Rose v. Lundy*, 455 U.S. 509, 522 (1982); *Fitzgerald v. Withrow*, 292 F.3d 500, 502 (6th Cir. 2002), *cert. denied*, 537 U.S. 1009 (2002). Once the federal claims have been raised in the state's highest court,³ the exhaustion requirement is satisfied, even if that court refuses to consider them. *Granberry v. Greer*, 481 U.S. 129, 134 (1987); *Manning v. Alexander*, 912 F.2d 878, 883 (6th Cir. 1990).

For the reasons explained above, the grounds for relief raised in this action are not yet exhausted for purposes of federal *habeas corpus* review. Consequently, the petition will be denied, and this action dismissed without prejudice. The petitioner may re-file his petition for federal *habeas corpus* review once he has exhausted his claims in the state courts.

It is so **ORDERED**.

A handwritten signature in black ink, appearing to read "Robert L. Echols", written in a cursive style.

Robert L. Echols
United States District Judge

³ With the promulgation of Tennessee Supreme Court Rule 39, review by the Tennessee Supreme Court is no longer required for a federal *habeas corpus* petitioner to satisfy the federal *habeas corpus* exhaustion requirement. *Adams v. Holland*, 330 F.3d 398 (6th Cir. 2003).